REMARKS/ARGUMENTS

In the specification, the paragraphs at page 1, first paragraph, page 10, line 18 and page 11, line 4 have been replaced to correct typographical errors identified by the Examiner.

Claims 2-15 remain in this application. Claims 2 and 5 have been amended. The following issues are outstanding in the Office Action dated November 19, 2003:

- 1. Claims 3 and 4 were rejected under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement. Claim 4 was necessarily rejected as being dependent upon claim 3;
- 2. Claims 1, 5 and 6 were rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/05873 ("Lina et al.");
- 3. Claims 2-4 and 7-9 were rejected as being unpatentable over Lina et al. in view of U.S. Patent Application Publication No. 2003/0077311 A1 ("Vyakarnam et al.") and U.S. Patent No. 5,621,035 ("Lyles et al.");
- 4. Claims 10-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Vyakarnam et al.; and
- 5. Claims 13-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lina et al. in view of 4,614,794 ("Easton et al").

Each of these will be addressed in turn.

1. Rejection of Claims 3 and 4 Under 35 U.S.C. 112, First Paragraph

Applicants have described in the present written description how the foam is adhered to

non-wound contacting surfaces. In particular, at least in the Abstract, the pad is described as

having relatively few open cells in contact with the areas upon which cell growth is to be

encouraged so as to avoid unwanted adhesions. In addition, such disclosures that are

incorporated within the present application adequately enable one of skill in the art to make, use

or sell the invention of claim 3 (and its dependent claims). See, for example, Figure 5 of

commonly-owned U.S. Patent No. 5,636,643.

2. Rejection of Claims 1, 5 and 6 Under 35 U.S.C. 102(b)

Applicants have canceled claim 1, and amended claim 5 to depend on amended claim 2,

which is allowable over the cited art as detailed below. Claim 6 likewise is indirectly dependent

on amended claim 2. In view of such amendments, these claims are submitted to be allowable

over Lina et al.

3. Rejection of Claims 2-4 and 7-9 Under 35 U.S.C. 103(a)

In this rejection, the Examiner stated that Vyakarnam et al. disclose that it is known to

apply bioabsorbable polymer foams to various areas of the body in order to promote tissue

regeneration. In addition, the Examiner stated Vyakarnam et al. disclose the use of a ceramic in

combination with the foam in order to reinforce the foam such that the foam is strengthened so as

to be structurally compatible with cancellous bone.

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It is respectfully submitted that the purpose of Vyakarnam et al. is to provide a

biocompatible composite made of a first fibrous layer attached to three-dimensional inter-

connected open cell porous foams that have a gradient in composition and/or microstructure

through one or more directions. In fact, one of the objects of the application for invention of

Vyakarnam et al. is to provide a biocompatible, bioabsorbable foam with a continuous

transitional gradient of morphological, structural and/or materials. See, for example, page 1,

paragraph [0007]; Abstract; all independent claims; paragraph [0034]; and many other places

throughout Vykarnam et al. The attachment of such a foam to another layer of material is further

emphasized in Vykarnam et al., which espouses the regeneration of tissue that mimics the

mechanical and/or biological characteristics of blood vessels. See paragraph [0048].

Lyles et al. does not cure these deficiencies. Rather, Lyles et al. discloses novel and

unique filler compositions and enhanced dental materials for use in dental applications—a

nonanalogous art. Further, the preferred embodiment of the ceramic dental restorative material

and filler composition (which does not define a continuous transitional gradient by any

definition) is specifically stated in the Abstract as at least four different materials by weight.

Lyles et al. further describes, generally, the process of manufacturing ultra low density fused-

fibrous ceramic filler material. There is no suggestion, teaching, or motivation in Lyles et al. that

would lead one of skill in the art to combine the process of Lyles et al. to create a gradient foam

as taught in Vykarnam et al., to then be substituted as the pad in Lina et al. (which teaches a

porous pad), and thereby maintain the purpose of all three inventions.

Neither claim 2 nor claim 7 combine a ceramic with the pad, as urged by the application

of Vykarnam et al. with Lina et al. And using a ceramic or pad, alone, would destroy the

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purpose of Vykarnam et al., which emphasizes a transitional gradient throughout the pad. The

process of Lyles et al. offers no guidance to this emphasis. Likewise, if the foam of Vykarnam et

al. were substituted into Lina et al., the gradient structure of the Vykarnam et al. foam would

destroy the ability of Lina et al. to create sufficient negative pressure. Accordingly, because the

gradient-forming purpose of Vykarnam et al. in combination with Lina et al. would inherently be

destroyed—both because the substitution of the Vykarnam et al. foam alone fails to achieve the

purpose, and the combination of Vykarnam et al. with Lina et al. likewise fails for the reasons set

forth above, and because Lyles et al. offers no guidance as to maintaining the purpose of

Vykarnam et al.—one of skill in the art would not be taught, motivated or otherwise discover the

inventions of claim 2 and claim 7 to be obvious.

Claims 3 and 4, and claims 8 and 9, depending on claims 2 and 7, respectively, are

submitted to be in condition for allowance for the same reason.

4. Rejection of Claims 10-12 Under 35 U.S.C. 103(a)

The Examiner cited Lina et al. as disclosing all the features of the claimed invention

including the pad comprised of branched polymers, but excluding the pad comprised of

bioabsorbable branched polymers. Vykarnam et al. was cited for it disclosure of bioabsorbably

branched polymers because the polymers are particularly well-suited for tissue engineering.

But the problems with the combination of Vykarnam et al. (teaching a transitional

gradient throughout the pad) with Lina et al. (teaching an open-pore pad) would still run counter

to each other. That is, if you were to take the branched polymers in a transitional gradient of

Vyakarnam et al., and combine it with the open-pore pad of Lina et al. or substitute it therein, the

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negative pressure through the pad). Accordingly, neither of these references, alone or in

combination, effectively teach, suggest, or motivate one of skill in the art to arrive at the

inventions of claims 10-12, without destroying their intended purpose. As such, claims 10-12

are submitted to be nonobvious in view of the cited references.

5. Rejection of Claims 13-15 Under 35 U.S.C. 103(a)

Easton et al. was cited for its disclosure of a wound dressing (pad) comprising the

biodegradable protein collagen, thereby teaching a cell-growth enhancing matrix for enhancing

cellular growth. Claim 13 is directed to a biocompatible wound dressing comprising, inter alia, a

pad comprised of a cell-growth enhancing matrix, an airtight seal removably adhered to said pad,

and a negative pressure source in fluid communication with said pad.

The invention of Easton et al. is directed towards protein/polysaccharide complexes, and

not to pure protein matrixes alone. Easton et al. teaches that the polysaccharides in the complex

involve inflammatory reactions in the user of the complex. Col. 3, 11. 8-13. Combining the

complex of Easton et al. with the pad of Lina et al. would result in potential inflammatory

reactions, moreso than normal because Lina et al. teaches negative pressure through the

pad/complex. Accordingly, one of skill in the art would necessarily avoid any matrix complex of

protein/polysaccharide due to the negative therapeutical implications of such a combination.

Each matrix complex would have to be meticulously manufactured to avoid any possibility of

inflammatory reaction, which would be both costly and inefficient.

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Because of these problems and costly, time-consuming additional efforts, one of skill in

the art would actually avoid the combination of a protein/polysaccharide complex with the

invention as disclosed in Linus et al. Accordingly, it is submitted that claim 13 is allowable in

view of Lina et al. in view of Easton et al. For the same reasons, dependent claims 14-15 are

submitted to be allowable.

Applicants submit further herewith an Information Disclosure Statement, and thank the

Examiner for bringing the improper form of the listing of references in the specification to

Applicants' attention.

Applicants have amended the specification, where indicated, to respond fully to the

Office Action of November 19, 2003. No new matter has been added.

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SUMMARY

Believing it has addressed all matters raised by the Examiner's November 19, 2003 Office Action, Applicants respectfully request timely action on the merits. No fees are believed to be required for the amendment. Nevertheless, the Commissioner is permitted to deduct or credit any fees that may be required from Kinetic Concept Inc. Deposit Account No. 500-326.

If upon consideration of the above, the Examiner should feel that outstanding issues remain in the present application that could be resolved, the Examiner is invited to contact the undersigned at the telephone number indicated to discuss resolution of such issues.

Applicants respectfully request favorable consideration.

Respectfully submitted,

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